STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 97-794

October 31, 1997

PUBLIC UTILITIES COMMISSION
Rulemaking on Qualifying Facility Rates, Terms, and Conditions in Restructured Electric Industry (Chapter 360)

NOTICE OF RULEMAKING

WELCH, Chairman; NUGENT and HUNT, Commissioners

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I. INTRODUCTION

In this Order, we initiate a rulemaking to amend Chapter 36 of our rules, Cogeneration and Small Power Production, in accordance with recent legislation that restructures the electric industry in Maine.[1]

During its 1997 session, the Legislature fundamentally altered the electric utility industry in Maine by deregulating electric generation services and allowing for retail competition beginning on March 1, 2000. At that time, Maine's electricity consumers will be able to choose a generation provider from a competitive market. As part of the restructuring process, the Act requires utilities to divest their generation assets and prohibits their participation in the generation services markets.[2] These changes in industry structure create numerous implications for existing contractual relationships between qualifying facilities (QFs) and utilities.

Maine utilities signed power purchase contracts with QFs as a result of federal and state policies adopted to promote the private development of renewable resources and efficient energy production. The federal Public Utilities Regulatory Policy Act (PURPA) and Maine's Small Power Production Act (SPPA) required utilities to enter long-term purchase power contracts with QFs.[3] Many of the contracts Maine's utilities have entered into with QFs extend beyond the March 1, 2000 implementation of retail competition. The parties entered these contracts at a time when electric utilities provided vertically integrated retail service on a monopoly basis. This industry structure had existed for many decades; as a consequence, the contracts reasonably contemplated that this structure would continue to exist into the future. Thus, efforts to restructure the industry should treat both QFs and utilities fairly, and not unreasonably frustrate the expectations of contracting parties.

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[1] An Act to Restructure the State's Electric Industry (the Act), P.L. 1997, ch. 316.

[2] Utility affiliates may participate in the generation market. 35-A M.R.S.A. §§ 3205, 3206, 3207.

[3] Qualifying facilities are generally renewable power producers under 80 MW or cogenerators that meets specified efficiency standards. See 35-A M.R.S.A. § 3303.

II. STATUTORY PROVISIONS

The Act contains several provisions regarding QFs in a restructured industry. Section 5 specifies that QF contracts shall continue in effect after restructuring and that the rights of contracting parties may not be impaired as a result of implementing the Act. Section 6 establishes a method to determine the rates for power purchases in contracts that tie such rates to the utility's retail rates. Under section 7, the Commission must continue to establish short-term-energy-only (STEO) rates to fulfill the terms of existing QF contracts. Section 8 requires the Commission, by rule, to establish a method to set long-term avoided costs and any rate, term, condition or other provision of a QF contract that may be rendered impractical or impossible to perform or implement as a result of industry restructuring. Finally, section 9 states that no utility may be required, pursuant to Title 35-A, Chapter 33, to enter into a contract to purchase power from a QF; the section does not abrogate any existing law or rules that provide QFs with the right to sell energy prior to March 1, 2000 on an "as available" basis.

Chapter 36 of the Commission's rules governs utility power purchases from QFs. We propose to amend Chapter 36[4] to conform with the Act and establish rules for QF purchases in a restructured industry. Generally, the proposed rule eliminates or revises provisions that are premised on requirements that utilities enter long-term contracts with QFs, revises provisions to determine STEO rates and rates for purchases of energy and capacity in a competitive market, provides for net energy billing, and adopts a process for establishing substitute contractual rates, terms or conditions that are rendered impractical or impossible to perform as a result of restructuring. We discuss the specific revisions and amendments to Chapter 36 in section IV below.

III. THE INQUIRY PROCEEDING

Prior to developing the proposed rule, we inquiry in Docket No. 97-497 into the effect of industry restructuring on QF contracts. We received comments from: Central Maine Power Company; the Industrial Energy Consumer Group; the Office of the Public Advocate; Regional Waste Systems; Consolidated Qualifying Facilities (S.D. Warren Company, Maine Energy Recovery Company,

[4] The Commission's current practice is to use three-digit designations for rules; accordingly, Chapter 36 will become Chapter 360.

the Independent Energy Producers of Maine, and Benton Falls Associates); Wheelabrator-Sherman Energy Company; Bangor Hydro-Electric Company; Hackett Mills Hydro Associates and UAH-Hydro Kennebec Limited Partnership; the Coalition for Sensible Energy; and Maine Public Service Company. The comments were constructive in helping us develop the proposed rule.

IV. DISCUSSION OF INDIVIDUAL SECTIONS

Section 1: General Provisions

The proposed rule amends the definitions section to delete, add, or modify existing definitions to be consistent with the proposed changes throughout the rule.

Section 2: Qualifying Cogeneration and Small Power Production Facilities

This section contains the requirements for a generating facility to be considered a QF. Because QF contracts will remain effective after retail competition, the proposed rule does not amend this section. However, there may be a need to amend subsection D (Ownership Criteria). This subsection states that a QF may not be owned by an entity primarily engaged in the generation or sale of electricity. It appears that this section was intended to prevent electric utilities from obtaining QF status. However, after industry restructuring, the rule would prevent competitive electricity providers from owning QFs. Because of the possibility that this provision may create unintended results in a restructured industry, we ask for comments on whether and how it should be amended.

Section 3: Availability of Energy and Capacity Cost Data

This section, originally titled "Availability of Electric Utility System Cost Data," deletes filing requirements that are premised on an integrated retail monopoly industry structure and replaces them with requirements that are consistent with the emerging competitive markets for electricity. The deleted items include long-term load forecasts, long-term energy resource plans, the projected cost of planned capacity additions, and long-term avoided costs calculated as the difference between total production costs of various energy resource plans. The proposed rule also deletes, as no longer necessary, the requirement that utilities notify the Commission if avoided costs have changed by 10% or more.

The proposed rule adds provisions requiring estimated market prices for wholesale energy in Maine, estimated market value of wholesale capacity in Maine, projections of capacity excesses and deficiencies, and the estimated cost of installing new peaking capacity in New England. This market-based capacity and energy cost data will allow the Commission to continue to set energy and capacity rates after the date of retail access through an administrative process. If we adopt a formula approach to establishing avoided capacity and energy costs, as discussed below, the data filed in accordance with this section would become unnecessary. Accordingly, the provisions of section 3 would cease to apply as of the date of retail access.

Section 4: Arrangements Between Utilities and Qualifying Facilities

Consistent with section 9 of the Act, the proposed rule deletes all provisions of the rule that are premised on a continued requirement that utilities enter new purchased power contracts pursuant to Title 35-A, Chapter 33, and maintains the requirement and related provisions to purchase energy on an as-available basis at STEO rates. The proposed rule also deletes outdated methods of calculating avoided cost and the fourth decrement avoided costs currently listed in section 4(C)(3).

As mentioned above, sections 7 and 8 of the Act require the Commission to periodically set STEO rates and to adopt a method for establishing terms related to long-term avoided costs. The proposed rule implements these requirements in separate subsections governing the rates for short-term energy purchases and for capacity and energy purchases. Both subsections specify that, prior to the date of retail access, the Commission will continue to establish rates for purchases through an administrative process based on the information filed in accordance with section 3 of the rule. Both subsections also contain two alternatives to establish rates after the date of retail access: 1) a formula approach; or 2) an administrative process.

Under the formula approach, New England Independent System Operator (ISO) energy and capacity clearing prices would determine rates for purchases. Rates would change monthly. In any particular month, rates would equal the relevant ISO clearing prices in that same month of the prior year, adjusted up or down by the year-to-year change observed in the prior month. The formula is designed to produce rates each month for purchases of energy, or energy and capacity, from QFs that approximate New

England market prices in that month. The utilities would obtain the ISO clearing price data and, by use of the formula, calculate rates each month. The utilities would electronically post the rates so that they would be immediately available to any interested person. Under the second alternative, the Commission would continue to use an administrative approach, informed by market information, to periodically establish rates for purchases. We seek comments on the advantages and disadvantages of each approach. We also seek comments on whether the formula approach for the establishment of STEO rates is permitted under section 7 of the Act.

The proposed rule maintains the existing provisions on factors affecting purchase rates. Such factors include dispatchability, coordinated scheduled outages, and reduced line losses. In light of the proposed rule's reliance on actual market information to establish rates, we request comment on whether these provisions remain appropriate.

Finally, we address the Consolidated QFs request, that we acknowledge in this rulemaking that so-called "out-year" or "orphan decrement" avoided costs have already been established. We decline to address this matter as inappropriate in a rulemaking context. The issue raised by the consolidated QFs is one of contract interpretation that should be brought before an appropriate forum for resolution.

Section 5: Net Energy Billing

Under the current provisions of Chapter 36, QFs with installed capacity of 100 kW or less have the option to buy and sell electricity on a net energy basis. The intent of the provision is to allow very small QFs to sell their excess generation to utilities without incurring the costs associated with a second meter. As a general matter, an existing practice that facilitates the use of small, renewable generating facilities without incurring unnecessary costs is not one that should be disrupted solely as a result of industry restructuring. Additionally, the Act maintains a policy of encouraging renewable and indigenous resources. 35-A M.R.S.A. § 3210. For these reasons, the proposed rule maintains the existing net energy billing provision until March 1, 2000 and includes two alternatives for similar arrangements after that date.[5]

[5] These provisions have been moved to a separate section in the rule.

For QFs with existing net energy billing contracts that extend past March 1, 2000, the proposed rule specifies that the transmission and distribution (T&D) utility shall continue to bill on a net energy basis. This provision complies with section 5 of the Act that requires existing contracts to continue in effect. The proposed rule contemplates that the T&D utility remains the sole provider of billing and metering services after retail access; we will consider the implications of competitive billing and metering on this provision when we consider that issue pursuant to 35-A M.R.S.A. § 3202(4). The proposed rule also contemplates that the T&D utility will purchase any excess generation and include it with generation from all other existing QF contracts under the terms of 35-A M.R.S.A. § 3204(4). We seek comment, however, on whether it would be more desirable for the rule to allow competitive providers or to direct or allow standard offer providers to purchase the excess generation.

For net billing after March 1, 2000, the proposed rule contains two alternatives. The first alternative maintains the definition of net energy billing as it currently exists and allows a net billing customer to choose any competitive provider that is willing to offer service and purchase energy on a net basis. If the customer takes generation service from the standard offer, the proposed rule requires the standard offer provider to provide service and purchase energy on a net basis. Consistent with the requirements of the Act, the T&D utility, after retail access, would no longer purchase the customer's excess generation.

The first alternative further specifies that the net billing customer and competitive provider may agree upon the rates by which excess energy will be purchased. If the customer is taking standard offer service, the standard offer provider shall be required to purchase energy at STEO rates as established under this rule.

The second alternative changes the approach to net energy billing by requiring the installation of two meters, one measuring the energy the customer draws from the system and the other measuring the energy the customer provides to the system. Under this alternative, when the customer is consuming more electricity than it is generating, one meter records the net usage; similarly, at any point in time that the customer's facility is generating more than the customer is using, the excess amount provided to the system is recorded on the second meter. At the end of the billing cycle, the customer is billed for the usage shown on the first meter and is paid for the energy

provided as shown on the second meter. The proposed rule defines this approach as instantaneous net energy billing. The customer's options to purchase from the competitive market and sell excess generation to its competitive provider at agreed-upon rates, or purchase and sell to the standard offer provider(s) are the same as Alternative 1.

We propose Alternative 2 as a result of information and arguments provided in a recently-concluded proceeding, Talmage/Inoue Petitions, Docket Nos. 97-513/97-532, in which CMP revealed that, despite the existing rule's premise of a single meter, it has routinely installed two meters.[6] CMP's comments in the Talmage/Inoue proceeding raise the question of whether the underlying premise of the existing provision (that the use of a single meter is desirable) remains valid. If it is now the case that the use of two meters is necessary or desirable, the billing and metering approach specified in Alternative 2 would appear to be more accurate than the existing approach. Accordingly, we seek comment on whether the use of two meters for customers with small generating facilities is necessary or desirable and, if so, whether the billing and metering approach contained in Alternative 2 is more accurate and should be adopted. As part of such comments, we request that the other utilities indicate whether they also meter net energy arrangements with two meters and explain why or why not. Additionally, Alternative 2 specifies that the net energy billing customer shall not be charged for the cost of a second meter so as not to unnecessarily discourage the installation of small renewable facilities. We seek comment, however, on whether it would be more appropriate to directly charge the customer for the second meter and associated connection costs.

With respect to any of the net billing alternatives, we ask for comment on whether the 100 kW or less qualification for net energy billing should be reduced (e.g., 10 kW) and whether the option should be limited to residential customers. We also ask for comment on whether only generation-related costs should be billed on a net energy basis so that net energy billing customers would pay full transmission and distribution costs. Finally, we seek comment on whether the net energy billing rule should contain a provision for a Commission-approved standard form contract. We ask whether such a requirement is necessary or desirable, and whether such a provision is prohibited by section

[6] CMP states that it does so because of the need to identify the amount of energy consumed for state sale tax purposes, and because its billing computer program cannot account for lower meter readings in subsequent months.

9 of the Act that states that utilities may not be required to enter contracts pursuant to Title 35-A, Chapter 33.

Section 6: System Emergencies

The substantive provisions of the current rule are unchanged in the proposed rule.

Section 7: Commission Procedures

Section 8 of the Act requires the Commission to establish methods for determining any rates, terms, conditions of QF contracts, including long-term avoided costs, that are rendered impractical or impossible to perform or implement as a result of industry restructuring. We discussed above our proposed method to establish long-term avoided costs. In this section, we discuss our proposal to establish other contract terms. Because such provisions may be varied and are likely to be contract-specific, the proposed rule includes a procedure whereby the Commission will establish rates, terms, and conditions, consistent with the requirements of section 8, as disputed issues arise.

Similar to existing practice, the proposed rule requires the QF and utility to first attempt to resolve any differences over their contract terms. If, after good faith negotiations, the parties cannot come to an agreement, either the utility or QF may file a petition for the Commission to establish the disputed term. In resolving the dispute, the Commission must make a finding that the disputed rate, term, or condition has been rendered impractical or impossible to perform as a result of industry restructuring. If it makes such a finding, the Commission, consistent with section 8 of the Act, shall establish a rate, term, or condition that preserves the intent and purposes embodied in the original contract.

The proposed rule also deletes many of the detailed procedures currently contained in section 6 of the rule. These provisions are either inapplicable due to industry restructuring or unnecessarily specific. The proposed rule does, however, maintain a general provision stating that the Commission may investigate, either as a result of a petition or on its own motion, any matter relevant to the provisions contained in the rule.

Section 7 (current rule): Commission Procedures Upon Petition to Issue Order Requiring Wheeling

Section 7 of the current rule implements the affiliate wheeling section of Title 35-A, section 3182. The proposed rule deletes this entire provision because it has become obsolete with the enactment of the Energy Policy Act of 1992 and FERC's promulgation of its Open Access Rule FERC Order No. 888.

Section 8: Small Electric Utilities

This section contains provisions and requirements regarding small electric utility purchases of power from QFs. The proposed rule adds a provision specifying that this section will no longer be effective as of the date of retail access, because at that time utilities will no longer be under any requirements to purchase QF power.

V. PROCEDURES FOR THIS RULEMAKING

This rulemaking will be conducted according to the procedures set forth in 5 M.R.S.A. §§ 8051-8058. A public hearing on this matter will be held on December 12, 1997 at 1:30 in the Public Utilities Commission hearing room. Written comments on the proposed rule may be filed until December 22, 1997; however, the Commission requests that comments be filed by December 5, 1997 to allow for follow-up inquiries during the hearing. Supplemental comments may be filed after the hearing. Written comments should refer to the docket number of this proceeding, Docket No. 97-794, and sent to the Administrative Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018.

Please notify the Commission if special accommodations are needed to make the hearing accessible to you by calling 1-287-1396 or TTY 1-800-437-1220. Requests for reasonable accommodations must be received 48 hours before the scheduled event.

In accordance with 5 M.R.S.A. § 8057-A(1), the fiscal impact of the proposed rule is expected to be minimal. The Commission invites all interested persons to comment on the fiscal impact, the economic effects, and all other implications of the proposed rule.

The Administrative Director shall send copies of this Order and the attached proposed rule to:

1. All electric utilities in the State;

2. All persons who have filed with the Commission within the past year a written request for notice of rulemakings;

3. All persons on the Commission's electric restructuring service list, Docket No. 95-462;

4. All persons on the service list in the inquiry, Public Utilities Commission, Inquiry Into Effect of Electric Restructuring on Contracts Between Qualifying Facilities and Electric Utilities, Docket No. 97-497;

5. All persons on the service list in the inquiry, Public Utilities Commission, Inquiry Into Terms and Conditions for Standard Offer Service and the Selection of Standard Offer Providers, Docket No. 97-519;

6. All persons on the service list in Talmage/Inoue, Petitions for Commission Intercession Regarding Efforts to Obtain Net Billing Purchasing Contract with Central Maine Power Company, Docket Nos. 97-513/97-532.

7. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5); and

8. The Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine 04333 (20 copies).

Accordingly, we

O R D E R

1. That the Administrative Director send copies of this Notice of Rulemaking and attached proposed rule to all persons listed above and compile a service list of all such persons and any persons submitting written comments on the proposed rule; and

2. That the Administrative Director send a copy of this Notice of Rulemaking and attached proposed rule to the Secretary of State for publication in accordance with 5 M.R.S.A. § 8053.

Dated at Augusta, Maine, this 31st day of October, 1997.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Hunt